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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/785,398	02/20/2001	Claudia Conti	88265-412	2052

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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 06/19/2002

15

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/785,398

Applicant(s)

Conti et al

Examiner

Lien Tran

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MF-XS

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on May 31, 2002
- 2a) ☐ This action is FINAL.
- 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of:

- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. _____.
- ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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1. Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The claims include the limitations that the wafer is flexible under ambient conditions for more than 40 seconds and 50 seconds after baking. More than 40 seconds and 50 seconds includes 41 seconds up to hours, days, weeks etc... and the claims and specification are not enabling for infinite time period. Page 5 of the specification discloses the wafer is flexible up to 70 seconds or more; but there is no evidence to support a time that is more than 70 seconds. Example 1 discloses the wafer is flexible for 60 seconds after baking. There is no evidence to conclude that the wafer is flexible after a few hours or few minutes. The claims are not enabling for all the time after 40 and 50 seconds.

1. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1,7,9 and 13, the phrase "more than 40 seconds after baking" and "more than 50 seconds after baking" is indefinite because there is no upper limit. The scope of the claims can not be determined because more than 40 seconds can include 40.5 seconds up to infinite time.

2. Claims 1-8 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled

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in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Applicant amended claim 1 to include the limitation of "an uncooked grits". This limitation is not supported by the original disclosure because there is nothing in the disclosure about the grits being uncooked. Just because the grits are added to a batter does not mean that it is uncooked because both cooked and uncooked grits can be added to batter.

3. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biggs et al in view of the book "The Wholefood Catalog" and "Fresh Ways with Pastries & Sweet".

Biggs et al disclose a wafer comprising flour, sucrose, invert sugar, fat, salt and lecithin. The wafer contain a food core selected form the group consisting of ice cream, fish, meat, vegetable, fruit, nuts, chocolate pieces and the like. The wafer may be coated with a barrier coating such as a fat or fat based coating. (See column 2)

Biggs et al do not disclose the addition of cereal grits, the ratio of flour to grits, the amount of water in the wafer, the amount of ingredients as claimed, the flexibility at ambient temperature and the water activity of the second confectionery material.

The Wholefood Catalog teaches to add cooked grits to batters for muffins, griddle cakes or quick breads for extra moisture and flavor.

The book "Fresh Ways with Pastries & Sweets" shows recipes for snaps which are the same as wafer. The book shows that after the snaps are baked, they are let to stand for about one minutes to firm up slightly and then they are shaped into cornets or cylinders.

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It is obvious that the wafer in Biggs is flexible for more than 40 seconds after it is baked at room temperature because the cookbook shows the snap is still flexible for shaping after 1 minute. The teaching of reheating for shaping in Biggs is for instances when the wafer is totally cooled down and has been let to stand for a time much longer than 40 seconds. Biggs also discloses that certain additives such as glucose, fructose will reduce the heat required to achieve the plastic state. Thus, it would have been obvious to more reducing sugars such as glucose and fructose to enhance flexibility. It would have been obvious to one skilled in the art to add grits, as taught by the cookbook, to the wafer batter if one desires to obtain extra moisture and flavor. The amount to use depends on the flavor and moistness desired and this can be determined by one skilled in the art. As to the issue of the grits being cooked or uncooked; this would have been an obvious matter of choice. While Biggs et al do not disclose the addition of water, it would have been obvious to one skilled in the art to add water in order to make the batter to form the wafer. The amount of water in the final wafer product will obviously be similar to the one claimed because the two products are the same type of product. As to the amount of ingredients, it would have been obvious to vary the amounts depending on the taste, flavor, texture desired. For example, it would have been obvious to add more sugar to obtain a sweeter taste. The water activity of the second confectionery material depends on the type of material used. It would have been obvious to select any type of confectionery material depending on the flavor desired. It would have been obvious to select a material that is compatible with the wafer.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

June 14, 2002



LIEN TRAN
PRIMARY EXAMINER

Group 1700